



STATE OF NEW JERSEY

In the Matter of Steven Garcia, Police
Officer (S9999U), Union City

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-1005

List Removal Appeal

ISSUED: APRIL 9, 2018 (SLK)

Steven Garcia appeals the removal of his name from the eligible list for Police Officer (S9999U), Union City, on the basis of an unsatisfactory background.

By way of background, the appellant applied to the subject examination, which had an August 31, 2016 closing date, and his name appeared on certification OL170409 that was issued to the appointing authority on April 5, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory background. Specifically, the appointing authority presented that the appellant was arrested on two separate occasions, June 6, 2012 and September 14, 2013, for incidents involving possession of marijuana.

On appeal, regarding the 2012 arrest, the appellant explains that he was the driver and was unaware that any of his passengers possessed marijuana. The appellant indicates that the arresting officer only detained him and he was sentenced to one year of probation and had to pay a fine. With respect to the 2013 arrest, the appellant indicates that he was a passenger in a vehicle where he was detained along with the other passengers. The appellant presents that even though he did not possess any illegal substance, he was still arrested. He indicates that the charges against him were dismissed. The appellant asserts that the appointing authority's Police Chief advised him that he needed to have his record expunged in order to be considered for a position in the subject title and he is currently in the process of obtaining the expungement. The appellant questions why his name is being removed

from the subject list as he is following all the steps that the Police Chief advised. He argues that the subject arrests do not define him as a person or a worker.

In reply, the appointing authority states that although the appellant claims that the reason he was arrested twice for the possession of a controlled dangerous substance was that he was a victim of circumstance and presents that the charges for both arrests were ultimately dismissed, this does not diminish the fact that he exercised poor judgment by making decisions to be in the company of persons who possessed illegal drugs. The appointing authority asserts that the nature of a position in the subject title requires that candidates have a good character and a background that presents an image of the utmost confidence and trust. However, it argues that these incidents indicate that the appellant has a background that shows a pattern of questionable judgment.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Civil Service Commission (Commission) to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

N.J.A.C. 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine. The Commission notes that an arrest may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. *See Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

In the instant matter, the appellant's background clearly provides a basis for removal from the subject list. In June 2012, the appellant was arrested for possession of marijuana, a controlled dangerous substance. He was sentenced to one year of probation and paid a fine. Subsequently, in September 2013, which is only a little more than a year after the first incident, the appellant again was arrested for possession of marijuana. While the appellant claims that he was a victim of circumstance, clearly being in the company with individuals who possessed illegal

drugs demonstrates that, at a minimum, the appellant lacks the judgment to currently be a law enforcement officer. In this regard, it is recognized that municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects Police Officers to present a personal background that exhibits respect for the law and rules. The appellant's judgment is especially troubling when considering that the appellant put himself in a position to be arrested for possession of marijuana for a second time a little more than a year after the first offense. Further, the appellant's record still has not yet been expunged. Finally, as the second arrest was less than three years prior to the subject examination closing date, there has not been ample time for the appellant to demonstrate he now possesses the judgment to be a law enforcement officer.

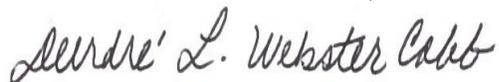
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the list for Police Officer (S9999U), Union City.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4th DAY OF APRIL, 2018



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Steven Garcia
Brian Stack
Kelly Glenn